JAMES MOORMAN
JOHN HOFFMAN
BARRY FISHER
Sierra Club Legal Defense Fund, Inc.
311 California Street, Suite 311
San Francisco, CA 94104
Telephone: (415) 398-1411

FELDMAN, WALDMAN & KLINE
LELAND R. SELNA, JR.
2700 Russ Building
San Francisco, CA 94104
Telephone: (415) 981-1300

Attorneys for Plaintiff SIERRA CLUB

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SIERRA CLUB, Plaintiff, v. ROGERS C. B. MORTON, et al., Defendants.	Civil Action No. 51464 WTS NOTICE OF MOTION AND MOTION TO AMEND COMPLAINT

TO ALL DEFENDANTS:

PLEASE TAKE NOTICE that on June 23, 1972, at 10:00 A.M. or as soon thereafter as counsel can be heard, plaintiffs herein will move the Court for an order amending plaintiff's complaint pursuant to Rules 15(a) and 25(d) of the Federal Rules of Civil Procedure as follows:

1. That ¶3 of the complaint be deleted and a new ¶3 substituted as follows:

> 3. Plaintiff Sierra Club is a non-profit corporation organized and operating since 1892 under the laws of the State of California. Its principal office is in San Francisco, California. The membership of the Club is approximately 140,000 nationally. Of this number, approximately 82,000 members live in California. The largest centers of membership are the San Francisco Bay area and the Los Angeles area. Additionally, the Club has chapters with substantial memberships throughout the San Joaquin Valley.
>
> The Sierra Club has conducted outings over the

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years on a regular basis in the Sierra Nevada. In addition, the Sierra Club has carried on a program to acquaint people with the values of the Sierra and to preserve it in National Parks and National Forest Wilderness Areas. In carrying out this program, Sierra Club has conducted, and continues to conduct, substantial activities in and around the Mineral King area. In addition, several of the Club's chapters have conducted and continue to conduct outings in and around Mineral King on a regular basis. In addition, many of the Club's members individually or in informal groups undertake hikes and other trail outings in and around the Mineral King valley and engage in various outdoor recreational activities in and around the valley such as picnicking, hiking, climbing, photography, camping, and family outings. A few of the Club's members own or lease small cabins in the Mineral King area which they use as retreats during the summer season.

The aesthetic, environmental, and recreational interests of the Club, its chapters and its members in the Mineral King area, including their enjoyment of the scenery, natural and historic objects and wildlife, would be injured by the conversion of the area into a commercial ski development. Use of the valley itself for the activities would be pre-empted. Development, furthermore, will impair the use and enjoyment of Mineral King as a beginning point for wilderness outings. In addition, with commercial chair and gondola lifts built up the mountainsides, the high country around Mineral King will be overloaded, depriving the Club, its chapters and its members of the wilderness experiences they have enjoyed since the turn of the century.

In addition, the Sierra Club has spent and continues to spend substantial time and effort in the conservation of Mineral King and the protection of the ecology of Mineral King and its environs. Over the years the Club has engaged in various campaigns to extend the boundaries of Sequoia National Park to include Mineral King. The early phase of this campaign culminated in 1926 with a compromise Act of Congress designating the area the Sequoia National Game Refuge, 53 Stat. 1431, 16 U.S.C. §688. The Club continues to seek to have the area added to the National Park. Mass development would obviously destroy the park qualities of the area and, in so doing, destroy the Club's conservational, environmental, and ecological interests in Mineral King. Thus, the ski development would destroy the scenic, natural wildlife and historic aspects of the Mineral King area.

2. That a new ¶3a be added to the complaint as follows:

3a. Plaintiffs LARRY E. MOSS, CLYDE MARTIN LITTON, ALBERT J. HILL, ELLEN NADEAN BISSIRI, DAVID GREEN, JEAN KOCH, LYAL D. ASAY, LESLIE AVERY,

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and RONALD KENNEDY are individuals who use the Mineral King valley either as a summer residence or as a park-land and recreation area. Plaintiff MINERAL KING DISTRICT ASSOCIATION is an unincorporated association of cabin owners in the Mineral King valley and vicinity. The members of the Association use their cabins as summer residences or as weekend or vacation retreats. All the above named plaintiffs have been active for several years in efforts to preserve and protect Mineral King from a ski development and to preserve the area in its present condition.

3. That a THIRD CLAIM FOR RELIEF concerning the National Environmental Policy Act, 42 U.S.C. §4333, et seq., be added to the complaint as follows:

THIRD CLAIM FOR RELIEF

21. Paragraphs 1-20 of this complaint are incorporated herein by reference.

22. The proposed ski development of Walt Disney Productions will have a permanent and substantial detrimental impact on the Mineral King area including the scenery, natural and historic objects, wildlife, soil, fish, water, and vegetation.

23. The National Environmental Policy Act (NEPA) became law on January 1, 1970. NEPA gives Congressional recognition to the profound impact of man's activity on the natural environment, citing resource exploitation as one of those impacts, and recognizes further the critical importance of "maintaining environmental quality to the overall welfare and development of man." (NEPA §101(a), 42 U.S.C. 4331(a)[1969].) It declares that

> it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

24. Section 101(b) of NEPA sets out the Federal Government's "continuing responsibility ... to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --

(1) Fulfill the responsibilities of

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each generation as trustee of the environment for succeeding generations;

(2) Assure for all Americans safe, healthful, productive and aesthetically and culturally pleasing surroundings;

(3) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice."

25. Section 102(1) of NEPA provides that "The Congress authorizes and directs that, to the fullest extent possible: (1) The policies, regulations and public laws of the United States shall be...administered in accordance with the policies set forth in this Act."

26. To effectuate these policies, §102(2)(C) of the Act requires that all agencies of the Federal Government

include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments

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> and views of the appropriate Federal, State and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by §552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

27. Section 102(2)(D) provides that each agency shall

> study, develop, and describe appropriate alternatives to recommend courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

28. Forest Service Manual Chapter 1940 entitled "Environmental Statement" was distributed by the Chief on July 13, 1971. The Regulation specifically implements NEPA, Executive Order 11514, the Council on Environmental Quality's "Revised Guidelines for Statements on the Proposed Federal Action affecting the Environment," 36 Fed. Reg. 7724 (April 23, 1971), Office of Management and Budget Bulletin No. 71-3 (1970), and the Secretary of Agriculture's Memorandum No. 1995 (1971). Section 1941.22 of the Chief's Directive provides as follows:

> Plans, Programs, and Major Projects. Environmental Statements will be prepared on major proposed plans, programs, and major projects directly undertaken by the Forest Service, or supported in whole or in part through land use permits, leases, contracts, grants, cooperative agreements, subsidies, technical assistance or granting of rights.

§1941.22(2)(f) provides that "The need for Environmental Statements should be seriously considered for ... major public service developments" and lists "winter sport sites" as an example.

29. The provisions of NEPA apply to the permits, rights-of-way and approvals necessary to allow the construction of the ski development of Walt Disney Productions, Inc. at Mineral King.

30. Defendants have not fulfilled their responsibilities under §§101(b) and 102(1) of NEPA to prevent the degradation of the Mineral King area and to preserve the natural environment of the area as a wildlife refuge.

31. Defendants have also failed to comply with the procedural requirements of §102(2) of NEPA. Among other things, they have failed to prepare and circulate for public comment an Environmental Impact Statement pursuant to §102(2)(C).

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32. Among other things, defendants have failed (a) to "consult with and obtain comments" from any Federal agency with regard to the required detailed statement, (b) to make copies of the required detailed statement available to the President, the Council on Environmental Quality and to the public pursuant to 5 U.S.C. §552, and (c) to have the required detailed statement accompany the proposed project through the existing agency review process.

33. Defendants have also, among other things, failed to study, develop and describe appropriate alternatives to the areas selected for development as required by §102(2)(D).

4. That the following ¶4a be added to the Prayer for Relief, as follows:

4a. That this Court enter judgment declaring any rights-of-way, permits, or approvals for Walt Disney Productions, Inc.'s Mineral King Ski Development to be unlawful and without legal effect unless and until the defendants comply with the National Environmental Policy Act, 42 U.S.C. 4321 (1969), and that the defendants be so ordered and enjoined.

5. That the words "in or about the summer of 1969" be eliminated from the first sentence of ¶8 of the complaint.

6. That the following named defendants automatically substituted pursuant to Rule 25(d) of the Federal Rules of Civil Procedure appear in the caption and ¶4 of the complaint as follows:

Rogers C. B. Morton in place of Walter J. Hickel
Earl Butz in place of Clifford M. Hardin
Douglas R. Leisz in place of J. W. Deinema

The purposes of the proposed amendments are (1) to bring plaintiff's complaint into conformance with the opinion of the Supreme Court in this case issued April 19, 1972, (2) to add parties who could have been joined as plaintiffs initially, and (3) to allege the defendant's failure to comply with the National Environmental Policy Act with regard to the

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subject of this suit arising since the appeal of the preliminary injunction. The reasons for the Motion are set out more fully in plaintiff's Memorandum of Points and Authorities accompanying this Motion.

DATED:

June 2, 1972

JAMES MOORMAN
JOHN HOFFMAN
BARRY FISHER
LELAND R. SELNA, JR.

By James Moorman
James Moorman
Attorney for Plaintiff
Sierra Club and Proposed
Additional Plaintiffs

ROBERT W. JASPERSON
GREGORY ARCHBALD

Of Counsel

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